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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,015	06/20/2003	Elmer D. Werth	W 0605	1014
26092	7590	11/07/2005	EXAMINER	
KYLE W. ROST 5490 AUTUMN CT. GREENWOOD VILLAGE, CO 80111			BRINSON, PATRICK F	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/604,015

Applicant(s)

WERTH, ELMER D.

Examiner

Patrick F. Brinson

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 8-12, 16-20, 28-32 and 36-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 13-15, 21-27, 33-35, 41 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/20/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election with traverse of the species election in the reply filed on 1 August 2005 is acknowledged. The traversal is on the ground(s) that there appears to be little or no burden to consider the claims reading on any of figs. 1-6. This is found persuasive and the associated claims 1-7, 13-15, 21-27, 33-35, 41 and 42 have been examined.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7, 13, 15, 21-25, 27, 33, 35, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 3,029,003 to **Gronemeyer**.

The patent to **Gronemeyer** discloses a dispensing closure for selectively sealing and unsealing the open mouth of a container body comprising a first closure panel (14) defining an inner dispensing opening (24) circumscribed by the first closure panel. The first closure panel is applied to the neck (11) of the container body (12) open mouth and sized to engage the top edge of the container body side wall at the

open mouth near the periphery of the first closure panel. A seal wall (17') is disposed transversely to the first closure panel and is positioned within the open mouth and is sized to engage the inside face of the container body side wall juxtaposed to the open mouth in a sealing relationship. The seal wall depends from the bottom face of the first closure panel. An outer lid (15) formed of a second closure panel joined to a peripheral wall (27), defining an outer dispensing opening (29) circumscribed by the second closure panel. The second closure panel is applied over the top of the first closure panel and sized to extend laterally beyond the periphery of the first closure panel, and the peripheral wall (27) depends from the second closure panel and is sized to engage the outer face of the container body side wall at (39) in a rotatable relationship at a fixed height with respect to the container side wall, such that the outer lid can be rotated with respect to the inner lid to selectively bring the outer dispensing opening into and out of alignment with the inner dispensing opening, as recited in claims 1 and 21. The second closure panel is maintained at a fixed height relative to the container through the connection of an annular rib (37) of the peripheral wall with the rib reception structure (39), maintaining the container body and the second closure panel at a fixed relative spacing. The first and second closure panels are fixed flush such that the inner dispensing opening would be sealed against the second closure panel when the inner and outer dispensing openings are in a non-aligned position, as recited in claims 2 and 22. Fig. 7 discloses a shoulder (20) formed

from the first closure panel and a rib (54) spaced below the second closure panel, maintaining the first closure panel between the rib and the second closure panel, as recited in claims 4 and 24. Additionally, fig. 7 discloses a groove between shoulder (41) and rib (54) for receiving peripheral shoulder (20). This groove forms an annular channel structure and the peripheral shoulder is a channel follower structure that is engaged within the channel to maintain the first and second closure panels at a fixed relative spacing while permitting relative motion of the inner and outer lids.

3. Claims 1, 2, 6, 14, 21, 22, 26, 34, 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5,449,085 to **Brun, Jr.**

The patent to **Brun, Jr.** discloses a dispensing closure for selectively sealing and unsealing the open mouth of a container body comprising a first closure panel (30) defining several inner dispensing openings (46 and 48) circumscribed by the first closure panel. The first closure panel is applied to the neck (24) of the container body (18) open mouth and sized to engage the top edge of the container body side wall at the open mouth near the periphery of the first closure panel. A seal wall (33) is disposed transversely, perpendicularly, to the first closure panel and is positioned within the open mouth and is sized to engage the inside face of the container body side wall juxtaposed to the open mouth in a sealing relationship. An outer lid (55) formed of a second closure panel joined to a peripheral wall (66), defining an outer dispensing opening (61) circumscribed by the second closure panel. The peripheral

wall is generally circular and is disposed perpendicular to the second closure panel, as recited in claims 14 and 34. The second closure panel is applied over the top of the first closure panel and sized to extend laterally beyond the periphery of the first closure panel, and the peripheral wall (66) depends from the second closure panel and is sized to engage the outer face of the container body side wall in a rotatable relationship at a fixed height with respect to the container side wall, such that the outer lid can be rotated with respect to the inner lid to selectively bring the outer dispensing opening into and out of alignment with the inner dispensing opening, as recited in claims 1 and 21. The second closure panel is maintained at a fixed height relative to the container through the connection of an annular rib (72) of the peripheral wall with the rib reception structure (26), maintaining the container body and the second closure panel at a fixed relative spacing. Fig. 8 illustrates the first and second closure panels being fixed at a spacing such that the inner dispensing opening would be sealed by sealing lips (40-44) against the second closure panel when the inner and outer dispensing openings are in a non-aligned position, as recited in claims 2 and 22.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Brun, Jr., '203, Smith, Nyden et al. '028 and '959, Castelli, Thom, Norton, Moore, Kappler, and Baxter et al. are all pertinent to

Applicant's invention in disclosing dispensing closures for selectively sealing and unsealing the open mouth of a container body.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Patrick F. Brinson** whose telephone number is (571) 272-4897. The examiner can normally be reached on M-F 7:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Michael Y. Mar** can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patrick F. Brinson  
Primary Examiner  
Art Unit 3754

P. F. Brinson  
October 18, 2005